

In the Matter of Merchant Mariner's Document No. Z-165150 and all other Seaman Documents  
Issued to: JUAN VIVAS, Jr.

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1246

JUAN VIVAS, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.11-1.

By order dated 24 August 1960, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that, on or about 15 July 1960, Appellant was convicted, on his plea of guilty, by the Second District Court of Bristol County, Commonwealth of Massachusetts, a court of record, for violation of General Laws, Chapter 94, Section 205 (unlawful possession of marijuana), a narcotic drug law of the State of Massachusetts.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a certified copy of the complaint, a certified copy of record of conviction on 15 July 1960, and a letter stating that the convicting court is a court of record under the provisions of General Laws, Chapter 218, Section 3.

Appellant testified that a cigarette butt was found in a pocket of his dungerees; he was advised by the District Attorney that Appellant "could get one year" if he did not plead guilty in court. Appellant was sentenced to two months in the House of Correction but execution of sentence was suspended to 12 July 1961.

On appeal, it is contended that Appellant's explanation as to what brought about the court conviction was excluded from consideration as a result of the arbitrary choice to charge Appellant under 46 U.S.C. 239b instead of 46 U.S.C. 239.

APPEARANCE ON APPEAL: Zwerling and Zwerling of New York City,  
by Irving Zwerling, Esquire, of Counsel.

OPINION

Appellant could have been charge under 46 U.S.C. 239 since he was serving on a ship under

authority of his document. If this had been done, the conviction by a State court would not have been binding on the Examiner. Nevertheless, Appellant was properly charged under 46 U.S.C. 239b which requires revocation upon proof of a conviction by a court of record. Appellant's recourse in a situation such as this is a plea to the convicting court to reverse the conviction which controls the outcome in this proceeding.

ORDER

The order of the Examiner dated at New York, New York, on 24 August 1960, is AFFIRMED.

J. A. Hirshfield  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 13th day of June 1961.